

1  
2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT TACOMA

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 LUIS ANTONIO RUIZ,

9 Defendant.

CASE NO. CR20-5002 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
SUPPRESS

10 This matter comes before the Court on Defendant Luis Antonio Ruiz's ("Ruiz")  
11 motion to suppress, Dkt. 28, and memorandum of law in support of the motion, Dkt. 29.<sup>1</sup>  
12 The Court has considered the pleadings filed in support of and in opposition to the  
13 motion, the testimony given at the evidentiary hearing held February 20, 2020, the post-  
14 hearing pleadings and the remainder of the file and hereby denies the motion for the  
15 reasons stated herein.

16 **I. PROCEDURAL HISTORY**

17 On September 10, 2019 Ruiz was charged by complaint with Possession of Heroin  
18 with Intent to Distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(i). Dkt. 1.  
19 On January 30, 2020 Ruiz filed a motion to suppress "all evidence seized from his  
20

21 <sup>1</sup> The Local Rules require movants to submit argument in support of a motion in the same  
22 document as the motion and to include in the caption of the motion the date the motion is noted  
for consideration by the Court. Local Rules W.D. Wash. LCrR 12(b)(1).

1 person, his luggage, and his phone in Tacoma, Washington on September 9, 2019.” Dkt.  
2 28. On February 7, 2020, the Government responded. Dkt. 31. On February 12, 2020,  
3 Ruiz replied. Dkt. 34.

4 On February 20, 2020, the Court held an evidentiary hearing on the motion. Dkt.  
5 38. The Court heard testimony from five law enforcement officers and directed the  
6 parties to file post-hearing briefing. *Id.* Ruiz did not present witnesses or testify. *Id.*

7 On February 24, 2020, Ruiz filed a supplemental memorandum. Dkt. 39. On  
8 February 28, 2020, the Government filed a supplemental memorandum. Dkt. 41. On  
9 March 2, 2020, Ruiz replied to the Government’s supplemental memorandum. Dkt. 42.

## 10 **II. FACTUAL BACKGROUND**

11 In early September 2019, Special Agent Nathan Clammer (“Agent Clammer”) of  
12 United States Homeland Security Investigations (“HSI”) received a tip from a special  
13 agent from the HSI Los Angeles office. Dkt. 1, ¶ 7. That agent told Agent Clammer that a  
14 confidential source who provided reliable information for the agent in the past had  
15 advised that an unknown male who was a “Paisa” would be traveling from Los Angeles,  
16 California to Seattle, Washington via a Greyhound bus leaving Los Angeles on  
17 September 8, 2020 and arriving in Seattle on September 9, 2020.<sup>2</sup> *Id.* ¶¶ 7–8. The  
18 informant further reported that the unknown male would be carrying two kilograms of  
19 heroin molded to and carried on his body. *Id.* ¶ 8. Agent Clammer did not speak directly  
20 to the informant and knew nothing about his or her background except that he or she had

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21  
22 <sup>2</sup> The parties agree that a “Paisa” is a slang term for a Hispanic or Mexican-American person, particularly someone who is affiliated with a gang. Dkt. 1, ¶ 8; Dkt. 29 at 2 n.1.

1 provided reliable information to the agent in the Los Angeles HSI office. *Id.* ¶ 7. The fact  
2 that the informant had provided reliable information to another agent was sworn to by  
3 Agent Clammer in the complaint, *id.*, and uncontested at the evidentiary hearing.

4 Agent Clammer conducted an online search confirming that a Greyhound bus  
5 would leave Los Angeles and arrive in Seattle on September 9, 2020. *Id.* ¶ 9. Before  
6 arriving in Seattle, the bus was due to stop in Tacoma, Washington at 12:55 p.m. *Id.*

7 On September 9, 2020, Agent Clammer and five other law enforcement officers  
8 met the bus at the Greyhound bus station in Tacoma. The other officers present were:  
9 Special Agent Michelle Hardin-Pineda (“Agent Hardin”) of HSI, Special Agent Joe  
10 Parker (“Agent Parker”) of the Drug Enforcement Administration, Officer Aaron  
11 McCauley (“Officer McCauley”) of the Seattle Police Department, K-9 Officer Joe  
12 Mettler (“Officer Mettler”) of the Tacoma Police Department, and Task Force Officer  
13 Trooper Derek Sharf (“TFO Scharf”) of the Washington State Patrol. Each officer except  
14 TFO Sharf testified at the evidentiary hearing. Dkt. 38.

15 At the hearing, the testimony was as follows: Agent Clammer boarded the bus  
16 with Agent Hardin and TFO Scharf, all of whom were dressed in plain clothes. Dkt. 48,  
17 Transcript of Evidentiary Hearing (“Evid. Hrg. Tr.”) at 8–9. Based on the informant’s tip,  
18 the drug courier that the agents were looking for on the bus was a “Paisa,” which the  
19 agents understood to mean a Hispanic male commonly associated with Hispanic prison  
20 gangs. *Id.* at 75, 76, 97, 108. Agent Clammer’s badge was visible onboard the bus, but  
21 the other two agents’ badges were not. *Id.* Each officer was armed with a holstered  
22 weapon, but no officer openly drew or displayed his or her weapon. *Id.* at 31.

1 Agent Clammer walked down the aisle of the bus, looking at the various  
2 individuals. *Id.* at 8. Agent Hardin followed behind Agent Clammer, and TFO Scharf  
3 stood in the front of the bus near the driver, in “an area where you can stand . . . without  
4 impeding anyone getting on or off the bus.” *Id.*

5 Initially, Agent Clammer contacted a person referred to at the hearing as “Man 1.”  
6 *Id.* at 9–10. Man 1 sat “one seat further back and on the other side” of the aisle from  
7 Ruiz. *Id.* at 10. While Agent Clammer spoke to Man 1 on the bus, Agent Hardin was  
8 “secreted” into an empty seat and was not blocking the aisle. *Id.* at 10–11.

9 Man 1 appeared to be Hispanic. *Id.* at 20. Agent Clammer initially believed Man 1  
10 could be the subject of the tip because he was speaking in Spanish on the phone without  
11 looking at Agent Clammer; it appeared to Agent Clammer that Man 1 was purposefully  
12 avoiding him. *Id.* at 79. Agent Clammer asked to see Man 1’s bus ticket but Man 1 had  
13 difficulty responding, likely because he did not speak English fluently. *Id.* at 20, 80.  
14 When Agent Clammer first asked Man 1 for his bus ticket, Ruiz had it. *Id.* at 23. Ruiz  
15 told Agent Clammer that he was “interpreting” the bus ticket for Man 1. *Id.* at 80. Agent  
16 Hardin remembers Ruiz handing Man 1’s bus ticket back to him at some point. *Id.* at 23.

17 Without using physical force and using a normal tone of voice, Agent Clammer  
18 asked Man 1 to speak outside the bus. *Id.* at 11–12. Man 1 complied, and Agent Hardin  
19 followed him and Agent Clammer off the bus, there, the two officers stood “outside the  
20 bus on the little sidewalk area” trying to discern Man 1’s travel to see if it was consistent  
21 with the subject of the tip. *Id.* at 12. Man 1 handed Agent Clammer his phone, and Agent  
22 Clammer spoke on the phone to the person Man 1 had been talking to, his father, for

1 approximately one minute. *Id.* at 12, 104. After approximately 2–3 minutes Agent  
2 Clammer and Agent Hardin determined that Man 1’s travel plans did not match the travel  
3 plans of the drug courier because Man 1 was not from the Los Angeles area and was  
4 traveling past Seattle. *Id.* at 12–13, 81–82. Man 1 re-boarded the bus. *Id.* at 12.

5 Agent Clammer, Agent Hardin, and TFO Scharf also re-boarded the bus. *Id.* This  
6 time Agent Hardin stayed at the front of the bus where the bus driver is “but off to the  
7 side.” *Id.* at 13. Agent Clammer went towards the back of the bus and began speaking to  
8 Ruiz; TFO Scarf was a “[c]ouple seats back . . . tucked into the seats.” *Id.* at 14. At this  
9 point Agent Clammer and TFO Scharf were each behind Ruiz’s seat, which left the aisle  
10 to the exit of the bus clear. *Id.* Agent Hardin testified that there was at least one other man  
11 on the bus who appeared to be of Hispanic origin but who was not contacted. *Id.* at 26.

12 Agent Hardin believed that Ruiz might fit the description of the drug courier  
13 provided by the confidential informant because “[h]e had a facial tattoo that I had seen  
14 before on individuals who had spent time in prison.” *Id.* at 32. Agent Hardin saw Ruiz’s  
15 tattoo the first time she boarded the bus. *Id.* Agent Hardin communicated the fact that she  
16 had seen the tattoo and her impressions of what the tattoo meant to Agent Clammer  
17 before he boarded the bus for the second time. *Id.* at 32, 82. Agent Clammer testified that  
18 the fact that Agent Hardin had observed the tattoo was significant to him because it “fit  
19 the person I was looking for, the description that had been made to me by a Hispanic  
20 criminal as the type of thing that a paisa would have.” *Id.* at 82.

21 Agent Hardin testified that from her vantage point at the front of the bus, Agent  
22 Clammer was speaking to Ruiz in a “normal conversation” tone. *Id.* at 13. Agent

1 Clammer testified that he was a little “thrown off” because initially, he didn’t think Ruiz  
2 was Hispanic. *Id.* at 83. Agent Clammer testified that Ruiz handed him his identification  
3 voluntarily. *Id.* Agent Clammer saw that Ruiz had what appeared to him to be a Hispanic  
4 name after looking at his identification. *Id.* Agent Clammer asked Ruiz about his travel  
5 plans and learned that he was coming from Los Angeles and going to Seattle. *Id.* at 84.  
6 Agent Clammer testified that he asked Ruiz if he had any luggage, and when Ruiz  
7 indicated that he had some above his seat, Agent Clammer asked him if he minded taking  
8 it off the bus with him and that Ruiz took it off the bus himself voluntarily. *Id.* at 86.  
9 Agent Hardin testified that she saw Agent Clammer and Ruiz “start to move forward to  
10 get off the bus” and that Ruiz grabbed his bag from “up above,” carrying it off the bus  
11 himself. *Id.* at 13–15. No officer made physical contact with Ruiz or his luggage. *Id.*  
12 After getting off the bus and while within Ruiz’s earshot, Agent Clammer directed Agent  
13 Hardin to hold the bus so it would not leave. *Id.* at 15.

14 The bus had stopped in Tacoma next to “a parking lot right there that gives you a  
15 little cover.” *Id.* at 15. The back of the bus was “basically right at” the opening to the  
16 parking garage, about 20 feet from the front of the bus. *Id.* at 16. Agent Clammer walked  
17 with Ruiz, who carried his bag, until they were “just into” the parking garage at its  
18 entryway. *Id.* at 87.

19 The entryway to the parking garage was “ten to fifteen feet wide” and the group  
20 was “on the left side of that.” *Id.* at 89. “There is a wall on the left side of the entryway  
21 ‘parallel’ to the group.” *Id.* There was “no real wall on the right side” of the entryway. *Id.*  
22 Inside the entrance to the parking structure on the left side, Ruiz was “probably standing

1 about four feet away from the wall” with Agent Clammer standing two to three feet away  
2 from him. *Id.* at 88, 90. TFO Scarf stood slightly behind Agent Clammer immediately to  
3 his left. *Id.* at 88. Two other officers, Agent Parker and Officer Mettler, were “ten to 15  
4 feet” out from Ruiz and Agent Clammer. *Id.* at 57. Ruiz was not handcuffed. *Id.* at 56.

5 Agent Clammer first asked Ruiz if he had drugs with him; Ruiz responded that he  
6 did not. *Id.* at 88. Agent Clammer then asked Ruiz if he could search his bag, and Ruiz  
7 responded that he could. *Id.* Agent Clammer testified that at that point, TFO McAuley  
8 “walked up from my left and put his hand out and made a motion to Mr. Ruiz, and Mr.  
9 Ruiz handed the bag to TFO McCauley.” *Id.* After TFO McAuley “took the bag away to  
10 search it” Agent Clammer asked Ruiz if he “could search his person.” *Id.* at 91.

11 Ruiz asked “why.” *Id.* Agent Clammer explained that many people transport drugs  
12 on their persons. *Id.* Ruiz said “Yes.” *Id.* Agent Clammer testified that he did not know  
13 what Ruiz meant, so he clarified by saying, “Yes, I can search you?” *Id.* Ruiz again said  
14 “Yes” and, without prompting, turned around and put his hands up about shoulder height.  
15 *Id.* at 91–92. On cross-examination Agent Clammer testified that he clarified whether he  
16 could search Ruiz’s person twice, the second time asking “so you don’t mind?” *Id.* at  
17 106. Agent Clammer conceded that he had posed the question to Ruiz in the negative and  
18 Ruiz had responded affirmatively by saying “Yeah.” *Id.* at 92, 106. Agent Clammer  
19 explained that the non-verbal portion of Ruiz’s response led him to believe Ruiz had  
20 consented as follows: “As he said, ‘Yeah,’ he lift[ed] his arms up, which he had not done  
21 before, and turn[ed] around letting me, at this point, have easy access to pat him down.”  
22

1 *Id.* at 106–07. Agent Clammer “interpreted both the verbal and the non-verbal as  
2 consent.” *Id.* at 107.

3         The first place Agent Clammer touched performing the pat-down was the middle  
4 of Ruiz’s back, where he “immediately felt packages.” *Id.* at 92. Agent Clammer made  
5 the decision to arrest Ruiz “at the time [Agent Clammer] felt something hard on his  
6 back.” *Id.* at 100. Agent Clammer testified that while he did not know precisely what the  
7 “hard object” he felt on Ruiz’s back was, he realized “there was some type of packages  
8 affixed” there. *Id.* at 101.

9         Agent Clammer believed that his pat-down of Ruiz was happening simultaneously  
10 with Agent McAuley’s search of Ruiz’s bag, but Agent Clammer “was not paying  
11 attention specifically to what Agent McAuley was doing.” *Id.* at 92–93. While Agent  
12 Clammer was busy with Ruiz, Agent McAuley found a package containing an unknown  
13 white substance in Ruiz’s bag. *Id.* at 66. Agent McAuley “told Agent Clammer” about  
14 the white powder. *Id.* at 67.

15         Officer Mettler and his certified K-9 partner Ruby were also present. Officer  
16 Mettler retrieved Ruby to search Ruiz’s bag “after consent was obtained” to search the  
17 bag. *Id.* at 93. Ruby alerted on Ruiz’s bag “for the presence of the odor of narcotics.” *Id.*  
18 at 53. Agent Clammer testified that Ruby alerted on the bag “after” he had made the  
19 decision to arrest Ruiz. *Id.* at 93. Agent Clammer further testified that he believed Ruiz  
20 was handcuffed before Agent McAuley found the white powder in his bag. *Id.* at 94.

21         After arrest Ruiz was transported to the Tacoma Police Department, where he  
22 “voluntarily . . .” signed a written consent to search form. *Id.* at 94–95. A search of



1 Ruiz's person revealed "four packages of heroin under a girdle type garment, which held  
2 the packages tightly against his body." Dkt. 1, ¶ 14.

### 3 III. DISCUSSION

4 The Fourth Amendment permits brief investigative stops when a law enforcement  
5 officer has "a particularized and objective basis for suspecting the particular person  
6 stopped of criminal activity." *United States v. Cortez*, 449 U.S. 411, 417–418 (1981); *see*  
7 *also Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). The "reasonable suspicion" necessary to  
8 justify an investigative stop "is dependent upon both the content of information possessed  
9 by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 330 (1990). The  
10 standard considers "the totality of the circumstances—the whole picture." *Cortez*, 449  
11 U.S. at 417. Although a mere "hunch" does not create reasonable suspicion, *Terry*, 392  
12 U.S. at 27, the level of suspicion the standard requires is "considerably less than proof of  
13 wrongdoing by a preponderance of the evidence," and "obviously less" than is necessary  
14 for probable cause, *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

15 In this case, Ruiz moves to suppress evidence resulting from the search of his  
16 person, luggage, and phone. Dkt. 28. He argues that law enforcement seized him, that the  
17 seizure was without reasonable suspicion, that his consent to search was invalid, and that  
18 his arrest was not supported by probable cause. *Id.*; *see also* Dkts. 39, 41.

#### 19 A. Seizure

20 Viewing the totality of circumstances surrounding the incident, a seizure occurs  
21 when a reasonable person would have believed that she was not free to leave. *Brendlin v.*  
22 *California*, 5151 U.S. 249, 255 (2007) (quoting *United States v. Mendenhall*, 446 U.S.

1 544, 554 (1980)). The totality of the circumstances includes the “collective knowledge of  
2 the officers involved.” *United States v. Hall*, 974 F.2d 1201, 1204 (9th Cir. 1992)  
3 (quotation omitted). It is well established that law enforcement officers may contact  
4 passengers on public buses without the encounter developing into a seizure “provided a  
5 reasonable person would understand that he or she is free to refuse.” *United States v.*  
6 *Drayton*, 536 U.S. 194 (2005). Another way to view this question is by asking whether “a  
7 reasonable person would feel free to decline the officers’ requests or otherwise terminate  
8 the encounter.” *Brendlin*, 551 U.S. at 249 (quoting *Florida v. Bostick*, 501 U.S. 429, 435–  
9 36 (1991)).

10 In *Drayton*, the United States Supreme Court held that:

11 police did not seize respondents when they boarded the bus and began  
12 questioning passengers. The officers gave the passengers no reason to  
13 believe that they were required to answer the officers’ questions. When  
14 Officer Lang approached respondents, he did not brandish a weapon or  
15 make any intimidating movements. He left the aisle free so that respondents  
could exit. He spoke to passengers one by one and in a polite, quiet voice.  
Nothing he said would suggest to a reasonable person that he or she was  
barred from leaving the bus or otherwise terminating the encounter.

16 *Drayton*, 536 U.S. at 203–04. The Court finds that the facts as set forth in part II of this  
17 Order regarding Agent Clammer’s contact with Ruiz while onboard the bus are analogous  
18 to the above quoted facts and findings from *Drayton*. Therefore, Ruiz correctly concedes,  
19 Dkt. 29 at 12, and the Court agrees, that he was not seized within the meaning of the  
20 Fourth Amendment when Agent Clammer questioned him on the bus about his travel  
21 plans and identity. *Drayton*, 536 U.S. at 203–04; *see also Bostick*, 501 U.S. at 435–36  
22 (police contact in the crowded confines of a public bus did not constitute seizure).

1           Nonetheless, Ruiz argues that the encounter developed into a seizure when law  
2 enforcement attempted to dictate or control his movements by asking him to leave the bus  
3 with his luggage, walking with him approximately twenty feet down the length of the bus  
4 and into the entryway to the parking garage, and continuing to question him in that  
5 location. *Id.* at 10–12 (relying on *Brendlin*, 551 U.S. at 257).

6           The issue in *Brendlin* was whether police seized a passenger in a private vehicle  
7 when an officer initiated a traffic stop of the vehicle. *Brendlin*, 551 U.S. at 247. *Brendlin*  
8 is inapposite to the instant case involving a public bus and a tip originating from a  
9 confidential informant. Instead, the Court finds that *Mendenhall* is a better authority.  
10 *Mendenhall* involved a woman traveling at the airport. *Mendenhall*, 446 U.S. at 546.  
11 Agents approached her because her conduct appeared “to be characteristic of persons  
12 unlawfully carrying narcotics.” *Id.* at 547. The agents spoke with her for a few minutes,  
13 asked her for her identification, then asked if she would accompany them to an office in  
14 the airport for further questioning. *Id.* at 548. Agents escorted her to the office “located  
15 up one flight of stairs about 50 feet from where [Mendenhall] has first been approached .  
16 . . .” *Id.* She agreed to go with the agents to the office, and, once there, agreed to a search  
17 underneath her clothing. *Id.* at 548–49.

18           The Government cites *Mendenhall* for the proposition that no seizure occurred in  
19 this case. Dkt. 31 at 5. Defense, however, aptly points out that *Mendenhall* was a plurality  
20 opinion where the majority holding that a seizure did not occur commanded only two  
21 votes. Three other justices assumed without deciding that a seizure had occurred. The  
22 four remaining justices would have held that Mendenhall was seized. Thus, like the

1 justices in the concurring opinion, this Court will assume without deciding that Ruiz was  
2 seized when law enforcement contacted him in a public location and then escorted him to  
3 another location out of public view for the purpose of questioning.

4       Regardless, Ruiz's seizure at the entryway to the parking structure was justified by  
5 reasonable suspicion. *Mendenhall*, 446 U.S. at 560–66 (Powell, J., concurring)  
6 (reasonable suspicion existed to question Mendenhall at the airport based on  
7 Mendenhall's travel patterns and drug courier profiles). In this case, Ruiz's presence on  
8 the bus that was the subject of the tip, his travel pattern, the tattoos on his face, and the  
9 fact that he appeared to be a Hispanic male all matched the information provided by the  
10 informant to the agent at the Los Angeles HSI office. Moreover, while the informant's  
11 criminal history and basis of knowledge to provide the tip is unknown, the agents in this  
12 case knew that he or she had provided reliable information in the past. *United States v.*  
13 *Rowland*, 464 F.3d 899, 910 (9th Cir. 2006) (citing *Florida v. J.L.*, 529 U.S. 266, 271  
14 (2000)) (tip from informant who has previously provided reliable information holds more  
15 weight than tip from first-time informant). Although reliability is the hallmark of  
16 probable cause and reasonable suspicion, *Illinois v. Gates*, 462 U.S. 213 (1983), even a  
17 tip from an anonymous person can be reliable in support of reasonable suspicion if the tip  
18 indicates knowledge of a suspect's affairs and predicts their future behavior, *United*  
19 *States v. Navarette*, 572 U.S. 393 (2014); *Alabama v. White*, 496 U.S. 325 (1990). That is  
20 exactly what occurred in this case when the confidential informant predicted the specific  
21 bus that the drug courier would arrive on, the drug courier's travel plans, his sex and  
22 background as a Hispanic male belonging to or holding himself out as a member of a

1 prison gang, and the manner in which the courier would carry the heroin (on his body).  
2 Therefore, reasonable suspicion supported Ruiz's detention in the entryway of the  
3 parking garage.

4 Ruiz argues that the only conduct officers observed was him sitting in a seat on the  
5 bus, "conduct that does not give rise to reasonable suspicion with or without the officer's  
6 training and experience." Dkt. 34 at 7. The Court disagrees. Instead, Agent Clammer and  
7 Agent Hardin observed Ruiz sitting on the bus that was the subject vehicle of the tip, with  
8 facial tattoos, travel plans, and an assumed sex and ethnic background that, in light of  
9 Agent Clammer's experience and as communicated to Agent Hardin, were consistent  
10 with the information about the male "Paiza" who the informant said would be traveling  
11 on the bus. Moreover, Agent Clammer's observations were corroborated by his  
12 experience; he knew that a "Paiza" might have facial tattoos from prison and/or  
13 demonstrate connection to a prison gang. Given these facts as established at the  
14 evidentiary hearing, Ruiz's assertion that he was racially profiled for nothing more than  
15 "Riding While Brown," Dkt. 34 at 8, is not well taken.<sup>3</sup> The agents had particularized,  
16 articulable reasons to suspect that Ruiz was the drug courier they sought aboard that  
17 specific bus on September 9, 2020, which justified his seizure under the reasonable  
18 suspicion standard.

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19  
20 <sup>3</sup> The Court further notes that it is permissible to consider a suspect's racial or ethnic  
21 characteristics for purposes of determining whether the reasonable suspicion and/or probable  
22 cause standards are met. *United States v. Lopez*, 482 F.3d 1067, 1074 (9th Cir. 2007); *United States v. Bautista*, 684 F.2d 1286, 1289 (9th Cir. 1982). Of course, racial or ethnic characteristics, standing alone, will never support the particularized suspicion necessary to meet either standard. *Id.*

1     **B.     Arrest**

2             The Court also concludes that Ruiz's arrest was supported by probable cause.  
3     Probable cause is established "when, 'under the totality of circumstances known to the  
4     arresting officers, a prudent person would have concluded that there was a fair probability  
5     that [the suspect] had committed a crime.'" *United States v. Lopez*, 482 F.3d 1067, 1072  
6     (9th Cir. 2007) (citation omitted). In this case, the Court finds that Ruiz consented to be  
7     searched as demonstrated by his verbal and his non-verbal responses to Agent Clammer  
8     detailed extensively in part II of this Order. After Ruiz consented to a pat-down, Agent  
9     Clammer's suspicion rose to meet the probable cause standard when, in addition to the  
10    facts supporting his reasonable suspicion of Ruiz as detailed above, he touched the  
11    middle of Ruiz's back and "immediately felt packages." Evid. Hrg. Tr. at 92. While  
12    Agent Clammer did not know precisely what the "hard object" he felt on Ruiz's back  
13    was, he testified that he instantly realized "there was some type of packages affixed"  
14    there. *Id.* at 101. A prudent person would conclude there was a fair probability that the  
15    "packages" Agent Clammer felt "affixed" to Ruiz's body, carried exactly as the  
16    confidential informant had described, contained illegal drugs. *Lopez*, 482 F.3d at 1072.  
17    Thus, probable cause existed to arrest Ruiz. Because probable cause to arrest existed at  
18    the moment Agent Clammer felt the packages on Ruiz, the Court further concludes that  
19    the plain feel doctrine is inapplicable.

20            Finally, the Court will address the Government's argument that even if Agent  
21    Clammer alone had not developed probable cause, TFO McAuley's discovery of the  
22    white powder in Ruiz's bag brought the fact of the existence of the white powder into the

1 collective knowledge of the agents, whether or not it was communicated to Agent  
2 Clammer. Dkt. 41 at 1–4 (relying on *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th  
3 Cir. 2007) (courts “look to the collective knowledge of all the officers involved” in the  
4 investigation, even information that is “not communicated to the officer” who made the  
5 decision to detain) (emphasis added)). TFO McAuley’s discovery of the white powder in  
6 Ruiz’s bag does not support a finding of probable cause to arrest based on the agents’  
7 collective knowledge in this matter, however, because Agent Clammer testified that TFO  
8 McAuley discovered the white powder after he decided to arrest Ruiz. Evid. Hrg. Tr. at  
9 93–93. Thus, the fact of the white powder was not “in” the agents’ collective knowledge  
10 prior to Ruiz’s arrest, whether or not the fact of the white powder was communicated to  
11 Agent Clammer as the arresting officer.

12 Because the Court has concluded that reasonable suspicion to detain and probable  
13 cause to arrest existed, it does not reach the Government’s argument that the evidence  
14 should not be suppressed under the “inevitable discovery” exception to the exclusionary  
15 rule as stated in *Nix v. Williams*, 467 U.S. 431, 444 (1984).

#### 16 IV. ORDER

17 Therefore, it is hereby **ORDERED** that Ruiz’s motion to suppress, Dkt. 28, is  
18 **DENIED**.

19 Dated this 12th day of March, 2020.

20  
21 

22 BENJAMIN H. SETTLE  
United States District Judge